

## Coast Guard, DHS

## § 137.25

public thoroughfare separating the properties.

*Data gap* means a lack of, or inability to, obtain information required by subpart B of this part despite good faith efforts by the environmental professional or persons specified in §137.1(a), as appropriate, to gather the information under §137.33.

*Environmental professional* means an individual who meets the requirements of § 137.25.

*Facility* means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

*Good faith* means the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.

*Institutional controls* means non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to oil discharge and/or protect the integrity of a removal action.

*Relevant experience* means participation in the performance of all-appropriate-inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

### **§ 137.15 References: Where can I get a copy of the publication mentioned in this part?**

Section 137.20 of this part refers to ASTM E 1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. That document is avail-

able from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959. It is also available for inspection at the Coast Guard National Pollution Funds Center, Law Library, 4200 Wilson Boulevard, Suite 1000, Arlington, VA.

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## **Subpart B—Standards and Practices**

### **§ 137.18 Duties of persons specified in §137.1(a).**

In order to make all appropriate inquiries, persons seeking to establish the liability protection under §137.1(a) must conduct the inquiries and investigations as required in this part and ensure that the inquiries and investigations required to be made by environmental professionals are made.

### **§ 137.20 May industry standards be used to comply with this regulation?**

The industry standards in ASTM E 1527-05, (Referenced in §137.15) may be used to comply with the requirements set forth in §§137.45 through 137.85 of this part. Use of ASTM E 1527-05 for this purpose is optional and not mandatory.

### **§ 137.25 Qualifications of the environmental professional.**

(a) An environmental professional is an individual who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of the presence or likely presence of oil at a facility and the real property on which the facility is located sufficient to meet the objectives and performance factors in §137.30(a) and (b).

(1) Such a person must—

(i) Hold a current Professional Engineer's or Professional Geologist's license or registration from a State, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of 3 years of full-time relevant experience;

(ii) Be licensed or certified by the Federal government, a State, tribe, or U.S. territory (or the Commonwealth

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of Puerto Rico) to perform environmental inquiries under §137.35 and have the equivalent of 3 years of full-time relevant experience;

(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 5 years of full-time relevant experience; or

(iv) Have the equivalent of 10 years of full-time relevant experience.

(2) An environmental professional should remain current in his or her field through participation in continuing education or other activities.

(3) The requirements for an environmental professional in this section do not preempt State professional licensing or registration requirements, such as those for a professional geologist, engineer, or site-remediation professional. Before commencing work, a person should determine the applicability of State professional licensing or registration laws to the activities to be undertaken as part of an inquiry under §137.35(b).

(4) A person who does not qualify as an environmental professional under this section may assist in the conduct of all appropriate inquiries according to this part if the person is under the supervision or responsible charge of an environmental professional meeting the requirements of this section when conducting the inquiries.

#### **§ 137.30 Objectives and performance factors.**

(a) *Objectives.* This part is intended to result in the identification of conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located. In order to meet the objectives of this regulation, persons specified in §137.1(a) and the environmental professional must seek to identify, through the conduct of the standards and practices in this subpart, the following types of information about the facility and the real property on which the facility is located:

(1) Current and past uses and occupancies of the facility and the real property on which the facility is located.

(2) Current and past uses of oil.

(3) Waste management and disposal activities that indicate presence or likely presence of oil.

(4) Current and past corrective actions and response activities that indicate presence or likely presence of oil.

(5) Engineering controls.

(6) Institutional controls, such as zoning restrictions, building permits, and easements.

(7) Properties adjoining or located nearby the facility and the real property on which the facility is located that have environmental conditions that could have resulted in conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(b) *Performance factors.* In order to meet this part and to meet the objectives stated in paragraph (a) of this section, the persons specified in §137.1(a) or the environmental professional (as appropriate to the particular standard and practice) must—

(1) Gather the information that is required for each standard and practice listed in this subpart that is publicly available, is obtainable from its source within a reasonable time and cost, and can be reviewed practicably; and

(2) Review and evaluate the thoroughness and reliability of the information gathered in complying with each standard and practice listed in this subpart taking into account information gathered in the course of complying with the other standards and practices of this part.

#### **§ 137.33 General all appropriate inquiries requirements.**

(a) All appropriate inquiries must be conducted within 1 year before the date of acquisition of the real property on which the facility is located, as evidenced by the date of receipt of the documentation transferring title to, or possession of, the real property and must include:

(1) An inquiry by an environmental professional, as provided in §137.35.

(2) The collection of information under §137.40 by persons specified in §137.1(a).